IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO.116 OF 2004.

Sou.Dr.Smita Vijaykumar Swami.
Age:30 years, Occu.Housewife,
R/o Mahindra Apartment, Flat No.10,
Ambedkar Road, Near S.T.Stand,
Sangli. ... Applicant.

V/s.

Shri Dr.Vijaykumar Sidramayya
Swami, Age:30 yrs,
Occ: Physician & Surgeon,
R/o, 102-B, Ghongde Bunglow,
Bhavani Peth, Solapur. ... Respondent.

Mrs. Priyanka Patil, advocate for the Applicant.

Mr. R.S.Atange, advocate for the respondent.

CORAM: A.S.OKA, J.

DATED: 25th February, 2005.

JUDGMENT:

1. Heard the learned Advocates appearing for the parties.

2. The Applicant is the wife and the Respondent is the husband. The Respondent has filed a petition for Restitution of Conjugal Rights in the Court of Civil Judge, Senior Division, Solpaur. The Applicant has filed a petition for Divorce against the Respondent in the

Court of Civil Judge, Senior Division, Sangli. The Applicant has also filed an application under section 125 of the Code of Criminal Procedure,1973 which is pending before the learned Chief Judicial Magistrate, Sangli. Apart from these proceedings, there is a proceeding arising out of criminal complaint filed by the Applicant against Respondent which is also pending in the Court of Chief Judicial Magistrate, Sangli. The Applicant and Respondent are medical practitioners. The Applicant is a resident of Sangli and the Respondent is resident of Solapur.

3. The Applicant has contended in this application that it is not possible for her to attend the Court at Solapur as her father and mother are ailing. It is alleged that it is not safe for the Applicant to visit Solapur and to defend herself in the matrimonial petition. It is alleged that the Respondent has large medical practice at Sangli. Therefore, transfer of the petitions filed by the Respondent at Solapur is sought by the Applicant to the Court at Sangli. The Respondent has denied all the allegations made in the application and has contended that it is not possible for him to attend the Court at Sangli

as he is a busy medical practioner practising at Solapur.

4. I have heard rival submissions. The petition for Restitution of Conjugal Rights and petition for Divorce filed by the rival parties will have to be heard together. Therefore, it cannot be in dispute that both the petitions should be transferred to one and the same court. The Respondent is required to attend the Court of Sangli as there are three proceedings pending against him at Sangli. He has not applied for transfer of the said proceedings to Solapur. The said prayer is made by the Respondent in the affidavit in reply.

5. It is settled that in such matters, convenience of wife is to be seen. Therefore, a case is made out for transfer. Application for maintenance under Section 125 of the Cr.P.Code, 1973 can be heard by Civil Judge, Senior Division who is empowered to exercise powers of a Judicial Magistrate, First Class. Therefore, petition for Restitution of Conjugal Rights and petition for divorce and the said application for maintenance will have to be assigned to one and the same

court. Hence I pass following Order.

ORDER

(i) Marriage Petition No.76 of 2004 pending in the Court of the Civil Judge, Senior Division at Solapur is transferred to the Court of the Civil Judge, Senior Division at Sangli. The Application (Criminal Case) No.158 of 2004 filed by the Applicant for maintenance which is pending before the Chief Judicial Magistrate, Sangli is also transferred to the Court of Civil Judge, Senior Division, Sangli. The learned District Judge, at Sangli will ensure that aforesaid two proceedings as well as the petition for divorce bearing M.P. No.110 of 2004 filed by the applicant is also transferred to the Court of the learned Civil Judge, Senior Division, Sangli so that all the three matters can be heard together.

(ii) All the parties and the concerned Courts to act on the authenticated copy of

this order. After the matters are transferred in accordance with this order, concerned Court to issue notice to both the parties.

(iii) The concerned Court will decide the aforesaid three proceedings as expeditiously as possible.

(iv) Misc. Civil Application is disposed of in above terms with no order as to costs.

JUDGE